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OFFICE OF PETITIONS

In re Application of :
Gulati, Sandeep :
Application No. 10/616,869 :
Filed: July 9, 2003 :
Attorney Docket No. VIALO-24 :

ON PETITION

This is a decision on the petition under 37 CFR 1.102(d), to make the above-identified application special based on applicants who are small entities filing biotechnology applications as set forth in M.P.E.P. § 708.02, Section XII and the petition under 37 CFR 1.102(d) to make the above-identified application special based on developing treatments and cures for HIV/AIDS or cancer as set forth in M.P.E.P. § 708.02, Section X, filed on July 9, 2003 and resubmitted on March 3, 2004

The petition under 37 CFR 1.102(d), Section XII, is **DISMISSED**.

A grantable petition to make an application special under 37 CFR 1.102(d) and MPEP § 708.02, Section XII: Special Status for Applications Relating to Biotechnology Filed by Applicants Who are Small Entities, must be accompanied by (1) the petition fee under 37 CFR 1.17(h); and (2) state:

- (A) That small entity status has been established or include a statement establishing small entity status;
- (B) That the subject of the patent application is a major asset of the small entity; and
- (C) That the development of the technology will be significantly impaired if examination of the patent application is delayed, including an explanation of the basis for making the statement.

The instant petition fails to meet the requirements set forth above for special status because it lacks requirements (A) and (C). First, the invention is not an application related to biotechnology, rather the invention is a signal processing device that detects a certain event within an arrayed signal pattern. While some claims address the arrayed pattern is generated from different types of microarrays (e.g., claim 8), biotechnology includes techniques using organism and their components to make products, modify plants and animals to carry desired traits, or develop micro-organisms for specific uses. The current invention does not fall within this definition. Additionally, while the petition states that making this application special "will greatly increase the likelihood that ViaLogy will be able to remain in operation and to produce products based on this technology" and "will increase the likelihood that ViaLogy being able to raise costly research and development funds necessary for exploiting this technology," these

statements do not show that the development of the technology will be significantly impaired if examination of the patent application is delayed.

The petition under 37 CFR 1.102(d), Section X, is **DISMISSED**.

A grantable petition to make an application special under 37 CFR 1.102(d) and MPEP § 708.02, Section X: Inventions Relating to HIV/AIDS or cancer, must be accompanied by (1) the petition fee under 37 CFR 1.17(h); and (2) a satisfactory statement explaining how the invention contributes to the diagnosis, treatment or prevention of HIV/AIDS or cancer.

The petition states that the invention includes “a technique for analyzing arrays which are widely utilized for diagnosis of and creation of drugs of [HIV/AIDS and cancer] ... Earlier disclosure of the advances herein will have a beneficial effect on (i) detecting the presence of hybridization events which *may* be indicators of drug feasibility and/or effectiveness of a therapy; and (ii) treatment through pharmaceuticals, of HIV/AIDS and cancer” (emphasis added). This explanation does not show enough connection between the claimed signal processing invention and an invention related to HIV/AIDS and cancer. As understood, the invention and the potential or possible applications of the invention in contributing the diagnosis of the treatment of HIV/AIDS and cancer are too remote.

Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272-3206.

All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.


David Bucci
Petitions Examiner
Office of Petitions